# Public Prosecutor v Chia Teck Onn

COURT OF APPEAL (PUTRAJAYA) — CRIMINAL APPEAL NO J-05–142–05 OF 2013
AZIAH ALI, TENGKU MAIMUN AND VARGHESE GEORGE JJCA
14 AUGUST 2014

*Criminal Law — Murder — Penal Code — s 300 — Appeal by prosecution against amendment of charge to one under s 304(a) — Respondent murdering deceased during a heated quarrel with third party — Deceased who was behind third party accidentally stabbed by respondent — Respondent's action occurring at spur of the moment — Whether there was premeditation — Whether rash and negligent act — Deceased could have been saved if given prompt medical attention — Whether there was evidence of mens rea as required under s 300 — Whether charge properly amended*

*Criminal Procedure — Charge — Amendment — Appeal by prosecution against amendment of murder charge to one under s 304(a) of the Penal Code — Respondent murdering deceased during a heated quarrel with third party — Deceased who was behind third party accidentally stabbed by respondent — Respondent's action occurring at the spur of the moment — Whether there was premeditation — Whether rash and negligent act — Deceased could have been saved if given prompt medical attention — Whether there was evidence of mens rea as required under s 300 of the Code — Whether charge properly amended*

The respondent was charged with the offence of murder of one Gho Kinee Hing ('the deceased') at a coffee shop. On the morning of the incident, the respondent had as usual gone to the coffee shop which was run by SP5. A quarrel started between SP5, her sibling and the respondent relating to an event on the previous day. The quarrel escalated causing the respondent to become angrier and he threatened to assault SP5. The respondent then took out a knife from his boot and went towards SP5. Frightened, SP5 ran to the deceased who was present at the scene but was not involved in the quarrel. The deceased who was behind SP5 pushed her aside and the deceased was stabbed by the respondent. The deceased was first taken to the Kota Tinggi Hospital but was then transferred to the Sultan Ismail Hospital at Johor Bahru for further treatment. However he succumbed to his injuries later that night. The trial judge found that the action of the respondent happened 'at the spur of the moment' and that the prosecution had failed to prove a case under s 302 of the Penal Code ('the Code'). His Lordship found no evidence of mens rea as required under s 300 of the Code. However His Lordship found that the respondent's act was rash and negligent and there was sufficient evidence to

prove a prima facie case of culpable homicide not amounting to murder punishable under s 304(a) of the Code. The charge was thus amended and the respondent pleaded guilty to the amended charge. The prosecution appealed against the amendment of the charge.

**Held**, dismissing the appeal:

(1) There was no premeditation on the respondent's part to kill that morning. The evidence show that the unfortunate incident happened due to the sudden quarrel that was initiated by SP5's sibling. The quarrel escalated with the involvement of SP5. The heated quarrel between SP5 and her siblings with the respondent culminated with the stabbing incident. The special degree of mens rea referred to in s 300 was not present (see paras 14–16).

(2) The court further noted the opinion of the forensic pathologist who could not discount the possibility that had the deceased been taken to Hospital Sultan Ismail for prompt medical attention, his life could have been saved (see para 16).

**[Bahasa Malaysia summary**

Responden dituduh dengan kesalahan membunuh seorang yang bernama Gho Kinee Hing ('si mati') di kedai kopi. Pada waktu pagi hari kejadian, responden telah seperti selalu pergi ke kedai kopi yang dijalankan oleh SP5. Pergaduhan berlaku antara SP5, saudaranya dan responden berkaitan kejadian pada hari sebelumnya. Pergaduhan berpanjangan menyebabkan responden menjadi lebih marah dan dia mengancam untuk menyerang SP5. Responden kemudiannya mengambil keluar pisau dari butnya dan berjalan ke arah SP5. Ketakutan, SP5 berlari ke arah si mati yang berada di tempat kejadian tetapi tidak terlibat di dalam pergaduhan tersebut. Si mati yang berada di belakang SP5 menolak dia ke tepi dan si mati ditikam oleh responden. Si mati mulanya dibawa ke Hospital Kota Tinggi tetapi kemudiannya dipindahkan ke Hospital Sultan Ismail di Johor Bahru untuk perubatan lanjutan. Walau bagaimanapun dia meninggal dunia akibat kecederaan pada waktu malam tersebut. Hakim perbicaraan mendapati bahawa tindakan responden terjadi 'at the spur of the moment' dan bahawa pihak pendakwaan telah gagal untuk membuktikan kes di bawah s 302 Kanun Keseksaan ('Kanun'). Yang Arif mendapati tiada keterangan mens rea seperti yang dikehendaki di bawah s 300 Kanun. Walau bagaimanapun Yang Arif mendapati bahawa tindakan responden adalah terburu-buru dan cuai dan terdapat keterangan yang mencukupi untuk membuktikan kes prima facie homisid salah yang tidak menjumlahkan kepada pembunuhan yang boleh dihukum di bawah s 304(a) Kanun. Tuduhan oleh itu adalah dipinda dan responden mengaku bersalah kepada tuduhan yang dipinda. Pihak pendakwaan merayu terhadap pindaan kepada tuduhan tersebut.

**Diputuskan**, menolak rayuan:

(1) Tidak terdapat perancangan oleh pihak responden untuk membunuh pada pagi tersebut. Keterangan menunjukkan bahawa kejadian malang tersebut berlaku akibat pergaduhan tiba-tiba yang dimulakan oleh saudara SP5. Pergaduhan berpanjangan kerana penglibatan SP5. Pergaduhan hangat antara SP5 dan saudaranya dengan responden memuncak dengan keajadian tikaman tersebut. Tahap khas mens rea yang dirujuk di dalam s 300 tidak wujud (lihat perengggan 14–16).

(2) Mahkamah selanjutnya mengambil kira pandangan patoloji forensik yang tidak dapat menolak kemungkinan bahawa jika si mati dibawa ke Hospital Sultan Ismail untuk perhatian perubatan segera, nyawanya mungkin dapat diselamatkan (lihat perenggan 16). ]

**Notes**

For cases on Penal Code, see 4(1) *Mallal's Digest* (4th Ed, 2014 Reissue) paras 1644–1650.

**Cases referred to**

*Tham Kai Yau v PP* [1977] 1 MLJ 174; [1976] 1 LNS 159, FC (folld)
*Tholan v State of Tamil Nadu* AIR 1984 SC 759; 1984 CriLJ 478; 1984 SCC (Cri) 164, SC (refd)

**Appeal from:** Criminal trial No MT(1) 45B-05 of 2012 (High Court, Johor Bahru)

**Legislation referred to**

Penal Code ss 300, 300(d), 302, 304, 304(a)

*Aslinda bt Ahad (Deputy Public Prosecutor, Attorney General's Chambers) for the appellant.*
*Hisyam Teh Poh Teik (Teh Poh Teik & Co) for the respondent.*

**Aziah Ali JCA:**

**[1]** The respondent, Chia Teck Onn was charged with the offence of murder of one Gho Kinee Hing ('the deceased') at about 8am on 23 January 2009 at a coffee shop at No 9, Jalan Hussein, Kota Kechil, Kota Tinggi, Johor. At the end of the prosecution case the learned trial judge had amended the charge from s 302 of the Penal Code ('the PC') to culpable homicide not amounting to murder under s 304(a) of the said Code (exh P14). The respondent had pleaded guilty to the amended charge and was consequently sentenced to a term of imprisonment of 18 years from the date of arrest on 24 February 2012.

**[2]** The public prosecutor is dissatisfied with the decision of the High Court, hence this appeal. We had heard the appeal and having considered the appeal record and the submissions by Puan Aslinda bt Ahad, the learned deputy public prosecutor ('the DPP') and Encik Hisyam Teh Poh Teik learned counsel for the respondent, we dismissed the appeal and affirmed the decision of the High Court.

BACKGROUND FACTS

**[3]** The main eyewitnesses called by the prosecution were 'SP3', Tan Kah Lee and 'SP5', Chee Pek King.

**[4]** According to SP3, on the morning of 23 January 2012 the respondent had come to the coffee shop which was run by SP5 and her siblings, Chee Paik Wan and Chee Pek Lian. Apparently the respondent regularly had his breakfast at the coffee shop.

**[5]** According to SP3 on the day of the incident, a quarrel had started between his wife, Chee Paik Wan and the respondent relating to an event on the previous day when the respondent had brought coins amounting to RM100 to be changed. The following morning when the respondent came to the coffee shop for his usual breakfast, Chee Paik Wan told the respondent that there was a shortage of RM4.40. Then the quarrel started between Chee Paik Wan and the respondent. SP5 who was in the kitchen heard the commotion and came out to the front of the coffee shop and joined in the quarrel.

**[6]** During the quarrel, SP5 referred to an earlier similar incident where the respondent had created a ruckus in the coffee shop. This caused the respondent to become angrier and he threatened to assault SP5. The respondent then took out a knife from his boot and went towards SP5. Frightened, SP5 ran to the deceased who was present at the scene but was not involved in the quarrel. The deceased who was behind SP5 pushed her aside and then SP3 saw the deceased fell. He had been stabbed by the respondent. The respondent then ran away. The deceased was first taken to the Kota Tinggi Hospital but was then transferred to the Sultan Ismail Hospital at Johor Bahru for further treatment. However he succumbed to his injuries later that night.

**[7]** The forensic pathologist 'SP9', Dr Mohamad Aznool Haidy bin Ashorori prepared the post mortem report (exh P11). The cause of death is stated as 'stab wound to the abdomen'. In the opinion of SP9 who conducted the post mortem, the injuries sustained by the deceased could have caused excessive and rapid bleeding which later caused the deceased to succumb to his injuries. However SP9 had also stated as follows:

> Luka simati ini boleh diselamatkan jika pertolongan awal tapi sukar sebab terdapat luka di tisu-tisu di bahagian abdomen ... Didalam kes ini, lihat pada arah cedera dan status kecederaan ini boleh diselamatkan, tapi lihat pada tubuh mangsa itu sendiri kerana dalam kes ini (saluran darah), pada setiap masa ia respond pada rawatan, tapi banyak masa ia tidak respond sebab tubuh tidak dapat terima proses rawatan, tidak dapat selamatkan dia. Saya percaya yang kesan dari pendarahan itu, akhirnya boleh sebabkan kematian.

**[8]** In cross-examination SP9 testified that approximately 14–16 hours after the incident, the deceased was transferred from Kota Tinggi Hospital to Hospital Sultan Ismail. SP9 agreed with learned counsel that had the deceased been promptly taken to Hospital Sultan Ismail he probably could have been saved. SP9 said '... Saya setuju jika rawatan dilakukan segera, ia boleh selamatkan nyawa mangsa, tapi tak semestinya'.

**[9]** The learned trial judge considered the evidence adduced and found that:

(a) the quarrel took place for about 45 minutes and became more serious;

(b) the respondent is not acquainted with the deceased;

(c) the respondent did not go to the coffee shop with the intention to kill the deceased;

(d) at the material time the respondent was in a state of anger;

(e) that when the respondent was advancing towards SP5, SP5 was standing between the respondent and the deceased;

(f) the deceased had pushed SP5 aside which resulted in him being stabbed; and

(g) that there was only a single stab wound.

Premised on the above, His Lordship found that the action of the respondent happened 'at the spur of the moment' and that the prosecution has failed to prove a case under s 302. His Lordship found no evidence of mens rea as required under s 300 of the PC. However His Lordship found that the respondent's act was rash and negligent and there is sufficient evidence to prove a prima facie case of culpable homicide not amounting to murder punishable under s 304(a) of the PC. The charge was thus amended and the respondent then pleaded guilty.

**[10]** Before us the learned DPP for the appellant submitted that the evidence showed that an offence under s 300(d) had been committed because the evidence showed that the respondent had the intention to stab and that he intended to cause an injury that he knew was likely to cause death. Section 300(d) of the PC relied on by the learned DPP states as follows:

Except in the cases hereinafter excepted, culpable homicide is murder — A

(a) ...

(b) ...

(c) ...

B

(d) if the person committing the act knows that it is so imminently dangerous that it must in all probability cause death, or such bodily injury as is likely to cause death, and commits such act without any excuse for incurring the risk of causing death, or such injury as aforesaid.

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The learned DPP conceded that there was no premeditation or evidence of animosity between the respondent and the deceased. The respondent's target was SP5. However in rushing forward with the knife, it was submitted that the respondent knew that his act could cause death.

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**[11]** For the respondent, learned counsel Encik Hisyam Teh Poh Teik submits that the evidence showed that the respondent went to the coffee shop to have breakfast. Then the quarrel occurred and the respondent was provoked. It is submitted that he had acted on the spur of the moment, hence there was no premeditation. In support learned counsel referred to the case of *Tholan v State of Tamil Nadu* AIR 1984 SC 759; 1984 CriLJ 478; 1984 SCC (Cri) 164 found at p 1547 of *Ratanlal & Dhirajlal*'s *Law of Crimes* (Vol 2). In that case the appellant was standing in a street and was abusing the organisers of a chit fund scheme by using filthy language. A woman who was in front of her house told the appellant to move away, and when the appellant would not do so, the deceased came and also asked him to move away. An altercation occurred and the appellant took out a *soori* knife from his vest and fatally stabbed the deceased on his chest. It was held that as the incident had occurred on the spur of the moment and it could not be said that the appellant had intended to cause the death of the deceased or intended to cause the particular bodily injury which he had in fact inflicted, he was punishable under s 304 Part II, and not under s 302. Thus relying on the aforementioned case, learned counsel submits that the findings of the learned judge that the respondent's act did not amount to murder is therefore not perverse.

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**[12]** With regard to the question whether the respondent's act falls within the provisions of s 300 of the PC or whether it falls within the offence of culpable homicide not amounting to murder under s 304 of the Code, we are guided by the judgment of the late Raja Azlan Shah FJ (as His Royal Highness then was) in the case of *Tham Kai Yau v Public Prosecutor* [1977] 1 MLJ 174; [1976] 1 LNS 159; wherein His Royal Highness said as follows:

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Section 299 clearly defines the offence of culpable homicide. Culpable homicide may not amount to murder (a) where the evidence is sufficient to constitute murder, but one or more of the exceptions to s 300 of the Penal Code apply, and (b) where

A the necessary degree of mens rea specified in s 299 is present, but not the special degrees of mens rea referred to in s 300 of the Penal Code. We would like in this connection to express the need to bear in mind that all cases falling within s 300 of the Penal Code must necessarily fall within s 299, but all cases falling within s 299 do not necessarily fall within s 300. The first part of s 304 of the Penal Code covers
B cases which by reason of the exceptions are taken out of the purview of s 300, cll (1), (2) and (3) but otherwise would fall within it and also cases which fall within the second part of s 299, but not within s 300, cll (2) and (3). The second part of s 304 of the Penal Code covers cases falling within the third part of s 299 not falling within s 300, cl (4).

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**[13]** Section 300 of the PC provides as follows:

> Except in the cases hereinafter excepted, culpable homicide is murder —
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> (a) if the act by which the death is caused is done with the intention of causing death;
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> (b) if it is done with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused;
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> (c) if it is done with the intention of causing bodily injury to any person, and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death; or
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> (d) if the person committing the act knows that it is so imminently dangerous that it must in all probability cause death, or such bodily injury as is likely to cause death, and commits such act without any excuse for incurring the risk of causing death, or such injury as aforesaid.

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**[14]** The learned DPP had conceded that there was no premeditation on the respondent's part to kill that morning. We agree with the learned DPP. The evidence show that the unfortunate incident happened due to the sudden quarrel that was initiated by Chee Paik Wan. The quarrel escalated with the
G involvement of SP5.

**[15]** 'SP10' the investigating officer ('IO'), ASP Mohamad Hamizi bin Abdullah testified that the quarrel between SP5 and her siblings with the respondent was about 45 minutes long. It caused the respondent to become
H provoked and angry. It is apparent that the words uttered by SP5 so angered the respondent that he pulled out the knife from his boot and went towards SP5 who in turn ran to the deceased, who was not involved in the quarrel. The heated quarrel between SP5 and her siblings with the respondent culminated with the stabbing incident. In his testimony, SP10 who had recorded a
I statement from SP5 said '... simati tolak SP5 ke tepi dan terus meluru ke arah depan; berhadapan dengan OKT'.

**[16]** Having considered the evidence in this appeal, we were of the considered view that the special degree of mens rea referred to in s 300 was not

present. We further noted the opinion of the forensic pathologist SP9 who could not discount the possibility that had the deceased been taken to Hospital Sultan Ismail for prompt medical attention, his life could have been saved.

**[17]** For the reasons stated above, we agreed with the learned judge. We therefore dismissed the appeal and affirmed the decision of the High Court.

*Appeal dismissed.*

Reported by Kanesh Sundrum